



I. Study Introduction



Section 16 of Part XVI of Session Law 2206-248, House Bill 1723 directed the Environmental Review Commission and the Joint Legislative Transportation Oversight Committee to jointly study the merger of the organizational functions of the Ecosystem Enhancement Program (EEP) and the Clean Water Management Trust Fund (CWMTF). The North Carolina General Assembly selected Dye Management Group, Inc., along with our teaming partners, the Environmental Law Institute and SEPI Engineering, to conduct this study. This report documents the key findings and recommendations of this study.

This chapter provides background on the study scope and objectives. It also outlines our project approach and research methodology. The remaining sections of this report define the programmatic environment and regulatory framework in North Carolina, describe mitigation practices and strategies in other states, and compare these practices to North Carolina's. The report also provides an overview of current federal regulations and the potential impact of anticipated regulatory changes at the federal level, presents an analysis of various organizational and programmatic alternatives for both integrating EEP and CWMTF and providing mitigation, describes our findings and recommendations, and provides a proposed transition plan for implementing the various recommendations.

A. Study Background

The Federal Water Pollution Control Act (or The Clean Water Act), enacted in 1972, provides the basis in §401 and §404 for federal and state requirements that all permittees, including state departments of transportation and other government agencies, as well as private individuals and organizations, to mitigate impacts to streams and wetlands that are “waters of the United States.” In addition, the state of North Carolina adopted rules in 2001 regulating impacts to so-called “isolated waters” that fall outside the jurisdiction of the federal Clean Water Act. With a goal of maintaining nutrient reduction functions, North Carolina has also adopted Nutrient Offset Program in the Neuse and Tar-Pamlico river basins and rules protecting riparian buffers within the Neuse, Catawba, and Tar-Pamlico river basins.

Primary responsibility for the administering the federal program rests with the United States Army Corp of Engineers (USACE), based in part on policies and guidelines established by the United States Environmental Protection Agency (EPA). The primary responsibility for administering the state program in North Carolina rests with the Division of Water Quality (DWQ) of the North Carolina Department of Environment and Natural Resources (NCDENR).

The goal of the 404 program is no net loss. To achieve this policy of no net loss, regulators require permittees to go through a three-step mitigation sequence, of which the third step is